

REMARKS

This Application has been carefully reviewed in light of the Office Action. Applicants respectfully request reconsideration and favorable action in this case.

Double Patenting Rejections

Claims 1-83 stand rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-117 of US. Patent No. 6.732.176 in view of Feder et al (US. Patent No. 6.512.754). Although Applicants do not necessarily agree with or acquiesce to the Examiner's comments regarding the relationship of the claims of the present Application to the claims of the '176 Patent, Applicants will consider submitting a terminal disclaimer to overcome the non-statutory double patenting rejection upon an indication that the pending independent claims of the present application are otherwise allowable.

Rejections Under 35 U.S.C. § 103

Claims 146-166, 168-172, 174-177, 179-190, 192-210, 212-221, 256-274, 276-279, and 286-301 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Meier in view of Garrett et al, U.S. Patent Publication No. 200210019875 ["Garrett"], in view of Short et al, U.S. Patent No. 7,197,556 ["Short"]. Claim 191 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Meier in view of Garrett and Short, as applied above, and further in view of IEEE Std 802.11-1997, hereinafter referred to as IEEE. Claim 211 stands rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Meier in view of Garrett and Short, as applied above, and further in view of Official Notice.

To support a rejection based on obviousness, the Examiner must, as the MPEP requires, articulate why a combination of references teaches or suggests all limitations of the claims. See MPEP §§ 2141, 2143. Furthermore, "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal

conclusion of obviousness." MPEP 2143.01, citing *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007), quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Lastly, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

The Meier-Garrett-Short combination proposed by the Examiner does not establish a prima facie case of obviousness regarding Claim 146 because none of the references in the combinations (alone or combined) teach or suggest "the first access point determining a geographic location of the portable computing device." The Examiner relies on the passage at Col. 6, Lines 52-58 of Short as disclosing these limitations. Applicants respectfully disagree.

For example, the passage of Short relied upon by the Examiner fails to teach or suggest "the first access point determining a *geographic location of the portable computing device*" of Claim 146. In particular, although the passage relied upon by the Examiner mentions the concept of a "user location," Short fails to teach or suggest "determining a *geographic location of the portable computing device*" of Claim 146. Specifically, Short merely discloses identifying a location-specific port that a computer is using to access a network:

The method comprises establishing a network connection between a host and a network, transmitting network data packets from the host through a connection port, transmitting data packets from the host through *a location-specific connection port and identifying the port* at an access concentrator in the form of a port identifier.

Short, Abstract (emphasis added). Furthermore:

The access concentrator responds by sending an IP packet back to the gateway device *identifying the port number*. The gateway removes the port number and associated MAC address from the SNMP header and tables the information in an appropriate communications table database associated with the gateway device. In turn, the gateway device may *use this location-based identification for billing purposes*.

Short, Col. 10, Lines 31-37 (emphasis added). As such, Short merely discloses identifying a location-specific port that a computer is using to access a network. Identifying a location-specific port that a computer is using to access a network, however, fails to disclose "determining a *geographic location of the portable computing device*" of Claim 146, especially since a portable computing device may move while still using the port to access a network. Accordingly, Short does not teach each of the limitations of Claim 146. Furthermore, the Examiner does not rely on Meier or Garrett for anything additionally relevant to the foregoing.

For at least these reasons, Applicants submit that Independent Claim 146 is patentable over the prior art proposed by the Examiner. For analogous reasons, Applicants submit that Independent Claims 174, 177, 202, 256, and 286-289 are patentable over the prior art proposed by the Examiner.

Still further, dependent Claims 147-166, 168-172, 175-176, 179-201, 203-221, 257-274, 276-279, 290-301, and 303-311 directly or indirectly depend from Independent Claims 146, 174, 177, 202, 256, and 286-289 respectively and are therefore respectfully submitted to be patentable over the prior art proposed by the Examiner for at least the reasons set forth above with respect to the independent claims. Further, these dependent claims recite additional limitations that when considered in the context of the claimed invention further patentably distinguish the art of record.

As just one example, the Meier-Garrett-Short combination proposed by the Examiner does not establish a prima facie case of obviousness with regard to new Claim 303 because none of the references in the combinations (alone or combined) teach or suggest "the first access point receiving Global Positioning System (GPS) data from the portable computing device in order to determine the geographic location of the portable computing device." For example, as is discussed above, Short merely discloses identifying a location-specific port that a computer is using to access a network. Furthermore, the identity of the port in Short is determined based on the location-based identification merely being embedded in a port-location

authorization table (see Col. 7, Lines 44-46), being embedded in a router (see Col. 6, Lines 50-58), or being embedded in a PCMCIA card executed by a host (see Col. 6, Lines 50-58). As such, it has nothing to do with data received from a portable computing device. Accordingly, Short does not teach each of the limitations of Claim 303. Furthermore, the Examiner does not rely on Meier or Garrett for anything additionally relevant to the foregoing.

For at least these additional reasons, Applicants submit that Claim 303 is patentable over the prior art proposed by the Examiner. For analogous reasons, Applicants submit that Claims 304-311 are patentable over the prior art proposed by the Examiner.

CONCLUSION

In light of the foregoing, Applicants believe that all currently pending claims are presently in condition for allowance. Applicants respectfully request a timely Notice of Allowance be issued in this case.

If a telephone conference would advance prosecution of this Application, the Examiner may call Mark J. Spolyar, Attorney for Applicant, at 650-739-7511.

The Commissioner is hereby authorized to charge any extra fees and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts LLP.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicant



Mark J. Spolyar
Reg. No. 42,164

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